Clearance for high-rise buildings

516. SHRI MANOJ BHATTACHARYA: Will the Minister of ENVIRONMENT AND FORESTS be pleased to state:

(a) whether Government have recently issued guidelines making it mandatory for all high-rise structures throughout the country to take prior clearance from his Ministry;

(b) if so, the details thereof and the reasons thereto;

(c) whether the view points of the various Governments were solicited before the issue of the guidelines and if not, the reasons therefor; and

(d) the mechanism to ensure that the clearance of the projects is not unduly delayed?

THE MINISTER OF STATE IN THE MINISTRY OF ENVIRONMENT AND FORESTS (SHRI NAMO NARAIN MEENA): (a) and (b) Yes, Sir. The Environmental Impact Assessment Notification, 1994 was amended on 7th July, 2004 making it mandatory for new projects relating to construction of new townships, industrial townships, settlement colonies, commercial complexes, hotel complexes, hospitals, industrial estates and office complexes for 1,000 persons or more or discharging sewage of 50 thousand litres per day or more with an investment of Rs. 50 crores or more to obtain prior environmental clearance from the Central Government before starting any construction on the new project. The amendment was brought forth taking note of the increasing adverse impacts on wetlands and water bodies, besides the air pollution and serious health problems arising out of the environmental impacts of such projects.

(c) Yes, Sir.

(d) The Ministry has constituted an Environmental Appraisal Committee of Experts to appraise new projects within the stipulated time-frame.

Developmental construction activities in tribal areas and villages

517. SHRI DATTA MEGHE: Will the Minister of ENVIRONMENT AND FORESTS be pleased to state:

(a) whether Government have issued a fresh set of guidelines allowing a variety of developmental construction activities in tribal areas and villages on the fringe of forests;

(b) if so, the details thereof;

(c) whether Government have asked the State Governments that tribals and forest dwellers should be spared from eviction drives; and

(d) if so, the details thereof?

THE MINISTER OF STATE IN THE MINISTRY OF ENVIRONMENT AND FORESTS (SHRI NAMO NARAIN MEENA): (a) and (b) Yes, Sir. Central Government *vide* letter dated 03-01-2005, have granted general approval under Section-2 of the Forest (Conservation) Act, 1980, and permitted the State/UT Governments to proceed with strictly need based diversion of forest land below one hectare in each case, in favour of Government Departments for construction of schools, dispensary/hospitals, electric and telecommunication lines, drinking water projects, water/ rainwater harvesting structures, minor irrigation canal, non-conventional sources of energy, skill up-gradation/vocational training centre, power sub-stations, communication posts, and police establishment like police stations/outposts/border outposts/watch towers, in sensitive areas (identified by Ministry of Home Affairs). This dispensation is aimed at providing basic development facilities for tribals and other dwellers of forest fringe villages. The general approval is subject to fulfilment of certain stipulated conditions to meet the environmental requirements, and is valid till 31-12-2006. A copy of the letter of general approval is enclosed as statement. [Refer to the Statement appended to the Answer to Unstarred Question 512(C)]

(c) and (d) While examining the issue of the settlement of disputed claims of tribals and forests dwellers on forest land, and eviction of in-eligible encroachers from forests lands in pursuance of the Supreme Court order, it was observed by the Central Government that the State/UT Governments were not able to distinguish between the encroachers, and the original tribals and other forest dwellers living on forest lands. Therefore, to protect the rights to the genuine tribals and forest dwellers on forest lands, the Central Government *vide* letter dated 21-12-2004, has requested the State/UT Governments that they should not resort to eviction of tribals and forest dwellers other than in-eligible encroachers, till the complete verification is done for the recognition of such people and their rights, after setting up of District level Committees involving a Deputy Collector, a Sub-Divisional Forest Officer, and a representaive of Tribal Welfare Department, by the State/UT Governments as reiterated in guidelines dated 18-09-1990 and 30-10-2002 of the Central Government. A copy of the letter dated 21-12-2004 is annexed as Statement.

Statement

Copy of the letter issued by Central Government regarding eviction of tribals and forest dwellers

GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT & FORESTS

N.K. JOSHI
Director General of Forests & Special Secretary

Tele: 91 11 24361509
91 11 24363957

No.2-3/2004-FC (Pt-II) 21st December, 2004

To

The Chief Secretary,

All States/UTs.

Sub:- Traditional rights of tribals on forest lands-discontinuance of eviction of tribals thereof.

Sir,

All over the world, forestry, as a land-use, has survived on the concept of sustained yield which was ensured by creating compatible legal systems. In India, consolidation of forest laws started during the British period with the inception of Indian Forest Department in 1864 and scientific management of forests was introduced for planned and systematic management of the forests. The British Government enacted the first law on forests in 1865. To consolidate the law relating to forests, the transit of forest produce and other related matters, the Indian Forest Act was enacted in 1927. According to the Indian Forest Act, 1927, the Government can constitute any forest land or waste land which is the property of Government or over which the Government has proprietary rights, a reserved forest, by issuing a notification to this effect. Commercial interests of the then British Government motivated it to declare more and more lands as reserved forests, without ascertaining the rights of the tribals and other forest dwellers.

Even after independence in 1947, during the process of amalgamation of princely States, the activity of consolidation of Government forests continued. The State Government/UT Administrations proclaimed the lands of ex-princely States and the zamindari-lands as Reserved Forests. However, no effective steps were taken to simulaneously settle the rights of tribals and other forest dwellers. Absence of records of rights which never existed for these people, became the main constraint in resolving this issue. As a result, the rural people, especially tribals and forest dwellers who have been living in the forests since time immorial, have come to be erroneously looked upon as encroachers of forest lands.

The burning human problem on non-recognition of tribal rights over land with its origin in faulty implementation of legal provisions in pre-independent India, and the same remaining unresovled even after independce, has, continued to attract public attention. Having acknowledged the gravity of the problem, the Government, has been contemplating ways and means to address it. Consequently, for the first time, the guidelines under the Forest (Conservation) Act, 1980 showed the way for legal solutions to the long pending unresolved problem of settlement of rights and the tribals and other forest dwellers living on the forest lands since time immemorial. Side by side, recognition of the concept of sustainable forest management through participatory approach, in the National Forest Policy, 1988, brought to the fore mutual interdependence of forests and people. Unlike the 1952 Forests Policy which centred around production and commercial forestry, the Policy of 1988 gives due regard to the traditional rights of the tribal people on forest land. While recognizing the symbiotic relationship between the tribal people and forests, it also safeguards the customary rights and interests of the tribal people and forests dwellers on forest lands.

To fulfil the commitments as enshrined in the National Forest Policy, 1988, in respect of settlement of people's rights, especially rights of tribals and forest dwellers, over forests lands in regulated manner, the Central Government on 18th September 1990 issued guidlines for settlement of disputed claims of tribals, which were reiterated on 30-10-2002, requesting State/UT Governments to consider the settlement of disputed claims of tribals over forest lands and to set up Commission/Committees at the district levels involving Revenue, Forests and Tribal Welfare Departments for the settlement of disputed claims of tribals and forest dwellers. The

State Governments/UT Administrations were also requested to submit proposals in this regard to enable the Central Government to take a final decision in the matter in a time bound manner. However, the State/UT Governments could not implement the guidelines effectively and the issue remained unresolved.

The situation of the tribals became more vulnerable when, in pursuance of the Hon'ble Supreme Court order dated 23-11-2001 in IA No. 703 in IA No. 502 in Writ Petition (C) No. 202 of 1995, the Central Government instructed all the State/UT Governments on 3rd May, 2002 to evict the ineligible encroachers and all post-1980 encroachers from forests lands in a time bound manner. Consequent follow up action by the State/UT Governments for evicting the ineligible encroachers, brought more intensely to the forefront, the issue of the disputed claims and rights of the genuine tribals and forest dwellers. They could not be distinguished from encroachers, and were proceeded against. This generated much consternation. Various organizations took up the case of such tribals and forest dwellers whose disputed claims had not been enquired into, and who were being proceeded against and evicted. This prompted the Central Government to issue a clarification on 30-10-2002 to the effect that there is no change, in the policy of the Ministry with regard to regularisation of pre-1980 eligible encroachments, and the commitment with reference to forest-tribal interface on the disputed settlement claims remained valid.

The Central Government in its continuous bid to settle the disputed claims of the tribals and the forest dwellers, and to legitimize their traditional rights over forest lands, of subsistence agriculture, and trade in MFP issued supplementary guidelines on 5-2-2004 to encourage the State Governments/UT Administrations to take up the matter of settlement of rights of tribals and forest dwellers in the right earnest and perspective. However, before action could start on these guidelines, their operation was stayed by the Appex Court *ex-parte* on 23-2-2004. Central Government has moved an application before the Apex Court vacation of the order.

After a critical examination of the issue of settlement of claims over forest lands and eviction of in-eligible encroachers of forest lands, what emerges is that the State/UT Governments were not able to distinguish between the encroachers, and the original tribals and other forest dwellers living on forest lands since time immemorial. The Central

Government is convinced that the difficulty in distinguishing between genuine tribals/forest dwellers and in-eligible encroachers by the State Governments/UT Administrations is the main cause of the problems of tribals. Therefore, some kind of interim measures are necessary to safeguard the interests of the tribals and forest dwellers who have been living in forests since long, and whose disputed claims are yet to be settled.

In view of the above, and without prejudice to Supreme Court's order dated 23-11-2001 and 23-2-2004, it has been found appropriate to request the State/UT Governments, that as an interim measures, they should not resort to the eviction of tribal people and forests dwellers other than in-eligible croachers, till the complete survey is done for the recognition of such people and their rights, after setting up of District Level Committees involving a Deputy Collector, a Sub-Divisional Forest Officer, and a representative of Tribal Welfare Department, by the State/UT Governments as reiterated in guidelines dated 18-09-1990 and 30-10-2002 of the Central Government. The State/UT Governments are advised to exclude such tribals/ forest dwellers, other than ineligible encroachers, from the eviction drives. Simultaneously, it is also clarified here that this interim measure does not stop the State/UT Governments from evicting the ineligible encroachers from forest lands.

Suitable instructions may be issued to forest functionaries at all levels to keep the aforesaid in view while dealing with eviction of ineligible encroachments from forest lands.

Yours faithfully,

(N.K. Joshi)

Copy to:

1. The PMO (Attn. Shri K.V. Pratap, Deputy Secretary).
2. Officer on Special Duty (Attn. Shri Dhiraj Srivastava), National Advisory Council, 2, Motilal Nehru Place, New Delhi.
3. Secretary, Ministry of Tribals Affairs, Government of India.
4. All PCCFs/Nodal Officers (All States/UTs.)
5. All Regional Offices, Ministry of Environment and Forests.
6. Director (FC)
7. AIGs (FC)
8. Guard file.